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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,202	03/05/2002	Avinash Govind Thombre	PC10833ARTB	6366

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PFIZER INC
150 EAST 42ND STREET
5TH FLOOR - STOP 49
NEW YORK, NY 10017-5612

EXAMINER	
TRAN, SUSAN T	
ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No.	Applicant(s)	
	10/091,202	THOMBRE ET AL.	
	Examiner	Art Unit	
	Susan Tran	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-39 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-39 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Receipt is acknowledged of applicant's Declaration and Extension of Time filed 07/08/02, and Information Disclosure Statement filed 05/07/02.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 is rejected for the use of the phrase "2.5 kP to 25 kP". What is kP? Is it kilopond (kp)?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-14, 19-21, 24-35, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Eichelburg USPN 4,118,512.

Eichelburg teaches an orally administered animal medicament of improved palatability composition comprising combination of ingesta and yeast hydrolyzate

(column 3, lines 14 through column 6, lines 1-14). The ingesta can be made from common grains, or from vegetable protein materials, or mixtures thereof (column 6, lines 15-58). The ingesta may also comprise orally administered medicament selected from a variety of medicaments, including analgesics (columns 7-8). The yeast hydrolyzate is combined with the ingesta in an amount sufficient to enhance the palatability, *e.g.*, from about 0.5% to about 99% (column 9, lines 28-43). The amount of vegetable protein is from about 2% to about 95% (column 7, lines 3-20). The composition further comprises binder, including starch, gum, or carboxymethyl cellulose (column 9, lines 44-57). Eichelburg also teach the composition having moisture content (water content) from about 5% to about 12% (column 7, lines 28-33).

Regarding to claims 2-6, it is the examiner's position that the limitation "wherein the palatability improving agent provides for voluntary acceptance of the palatability improving agent by the companion animal which is greater than or equal to about 50% to about 90%" is inherent, because Eichelburg teaches the use of the same materials to obtain the same result desired by the applicant, *e.g.*, an orally-administered medicament having improve palatability suitable for companion animal, including dog and cat.

Claims 28, 29, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Jans et al. USPN 5,824,336.

Jans teaches a chewable tablet (palatable) for companion animals comprising active agent, binder, filler, yeast, and meat flavor (column 1, lines 53 through column 2,

lines 1-67; and example 2). The method of making the palatable composition is disclosed in example 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichelburg, in view of Likarova USPN 5,224,989.

Eichelburg is relied upon for the reason stated above. Eichelburg is silent as to the teaching of tablet, capsule, pill, cachet, troche, or chewable tablet in claims 22, 23, 36, and 37. Nonetheless, Eishcelburg teaches orally administered animal medicament in the wafer, sphere, cube, or other three dimensional shape (column 8, lines 16-32). Therefore, obtaining an oral tablet dosage form would have been obvious within the skilled artisan.

Regarding claims 8 and 15-18, Eichelburg does not teach the palatability-improving agent such as artificial meat, meat flavor, artificial cheese, or artificial dairy product.

Likarova teaches a film-forming composition suitable for veterinary medicine, including tablet, pills, granules, or pellets; the film-forming comprises artificial meat or milk flavor, or some other attractants and lurants to make the drug or medicine more

tasteful for animal (column 5, lines 31-35). Thus, it would have been obvious for one of ordinary skill in the art to modify Eichelburg's oral animal medicine composition using the film-forming having attractant flavors in view of the teachings of Likarova to obtain the claimed invention, because the references teach the advantageous results and the desired to have an improve taste composition suitable for animal.

Claims 22, 23, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichelburg, in view of Jans et al. USPN 5,824,336.

Eichelburg is relied upon for the reason stated above. Eichelburg is silent as to the teaching of tablet, capsule, pill, cachet, troche, or chewable tablet, and tablet hardness in claims 22, 23, 36, 37, and 38.

Jans teaches a chewable tablet (palatable) for companion animals comprising active agent, binder, filler, yeast, and meat flavor (column 1, lines 53 through column 2, lines 1-67; and example 2). The tablet has hardness strength of 100 Newton (~10.19 kp), (column 3, lines 32-35). Thus, it would have been obvious for one of ordinary skill in this art to combine Eichelburg's oral animal medicine composition in view of the teachings of Jans with the expectation of at least similar result, because the references teach the advantageous results in the use of similar ingredients to obtain an improved palatability composition for companion animals.

P rtinent Arts

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hibbert et al., von Bittera et al., Spradlin et al., and Kasraian et al. are cited as being of interest for the teaching of palatability composition for pet.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

a. palatability improving agent is not yeast

b. palatability improving agent is yeast

c. palatability improving agent is an artificial egg

d. palatability improving agent is an artificial beef

e. palatability improving agent is an artificial poultry

f. palatability improving agent is derived from low fat milk

g. palatability improving agent is mixture of herbs and spices

h. palatability improving agent is a low fat cheese product or artificial cheese

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 19 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600